

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on :01.03.2007

+ **WP(C) No.9286/2004**

SATPAL KHARWAL

...Petitioner

- versus -

STATE ELECTION COMMISSIONER

...Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R.K. Trakru with Mr S.K. Gulati

For the Respondent : Mr S. Tripathy

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 1. | Whether Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in Digest ? | Yes |

BADAR DURREZ AHMED, J (ORAL)
CM No.2594/2006

For the reasons stated in the application as well as on the basis of the submissions made on behalf of the counsel for the petitioner, this application is allowed. The writ petition is restored to its original number and the same is directed to be taken up for disposal today itself, subject, however, to the petitioner paying costs of Rs.15,000/- to the Advocates Welfare Fund. The

same be deposited within a period of one week and the receipt be filed in this court.

WP(C) No.9286/2004

1. The petitioner is aggrieved by the order dated 28.04.2004 whereby, in pursuance of Rule 92 (H) of the Delhi Municipal Corporation (Election of Councillors) Rules, 1970 (hereinafter referred to as 'the said Rules'), the State Election Commissioner declared the petitioner to be disqualified for being chosen and for being a member of Municipal Corporation of Delhi for a period of six years from the date of the said order. The petitioner contested the Delhi Municipal Corporation elections in the year 2002 which was held on 24.03.2002 from Ward No.45 (Khyala) as a candidate from the Bhartiya Janata Party (BJP). The results of the election were declared on 27.03.2002. The petitioner was unsuccessful. However, the petitioner, in terms of Rule 92 (A) of the said Rules, was required to keep a separate and correct account of all the expenditure in connection with the election, incurred or authorised by him or by his election agents between the dates on which he was nominated and the date of declaration of the result. Furthermore, by virtue of Rule 92 (B) of the said rules, such candidates were required to submit the account of election expenses within 10 days of the declaration of the result. The candidates for the election held on 24.03.2002 were, therefore, required to lodge the above mentioned

statement of accounts with the concerned Returning Officer by 08.04.2002 (07.04.2002 being a Sunday).

2. This was not done by the petitioner and the statement of election expenses was only submitted on 17.05.2002 in the Office of the State Election Commission, whereas he was required to submit the same to the concerned Returning Officer. Rule 92 (H) of the said rules also prescribes the disqualification of a candidate who fails to lodge his statement of election expenses within the time prescribed under Rule 92 (B). The said Rule 92 (B) reads as under:-

“92 (B). Lodging of accounts with the Returning Officer:—Every contesting candidate at an election of a ward shall, within ten days from the date of election of the returned candidate, lodge with the Returning Officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent.”

3. It appears that an opportunity of hearing was granted by the Commission to the petitioner before the impugned order was passed and the petitioner had indicated that his father had suffered a paralytic attack on 28.03.2002, i.e., immediately after the declaration of the result and, therefore, he could not file his statement of election accounts within time. Unfortunately, this explanation was not accepted by the State Election Commissioner. This is perhaps due to the fact that although the petitioner mentioned that his father suffered a paralytic attack, he did not produce any document in support thereof.

To support his contention that he was prevented by good reason for his failure to submit the account within time, the petitioner has filed by way of Annexure-E (collectively) various reports, prescriptions as well as results of the tests done by hospitals in an attempt to indicate that the petitioner's father did, in fact, suffer a paralytic attack on 28.03.2002 and was under treatment in the hospitals concerned during that period and, therefore, the petitioner was unable to present the statement of accounts within the 10 days prescribed. Since these documents were not produced before the concerned State Election Commissioner, the impugned order by itself cannot be faulted. However, after hearing the counsel for the parties, I find that there is a provision in the said rules, namely, Rule 92 (I) which enables the Election Commission to remove or reduce the period of this disqualification. Rule 92 (I) permits the Election Commission, for reasons to be recorded, to remove any disqualification under Part-V-A (Election Expenses) as well as it enables the Election Commission to reduce the period of any disqualification.

4. Therefore, while not interfering with the impugned order, the petitioner is given the liberty to approach the concerned Election Commission under Rule 92 (I) for a consideration of either removal of the disqualification or reduction in the period of disqualification. The petitioner shall move the application within three days and the same shall be dealt with by the Election

Commissioner within 10 days provided that all the material that is available with the petitioner is produced before the Election Commission.

The writ petition stands disposed of.

Dasti to both the parties.

**BADAR DURREZ AHMED
(JUDGE)**

March 01, 2007
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